

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

07.

O.A. No. 65 of 2011

Dafedar Ram Naresh Singh Rathore

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. Mohan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER  
01.11.2011

1. The petitioner in this petition has prayed that the respondents be directed to quash and set aside the discharge order dated 30.6.2008. It has also been prayed that the petitioner should be deemed to have qualified in the promotion cadre as was notified vide order dated 6.5.2007 and that he be considered for promotion to the rank of Naib Risaldar by the Departmental Promotion Committee.

2. The petitioner was enrolled in the Army as Sepoy on 14.6.1984 and subsequently rose to the rank of Dafedar. He appeared for the promotion cadre course for the rank of Dafedar on 31.10.2002. But, it was alleged that due to some animosity with Maj Dhyhan Mayadas, he failed in two subjects by tampering with the results, whereby the marks were reduced from 45 to 33 in Tactics and from 44 to 33

in Technical Training. The petitioner raised this issue by stating that there was tampering by the Presiding Officer (Maj Dhyam Mayadas), which was not properly addressed by the authorities in the manner as it deserved. Thereafter he again appeared in the next promotion cadre for Dafadar and qualified on 24.11.2003 and became a Dafadar on 1.12.2003. Thereafter, the petitioner was sent on Extra Regimental Employment (ERE) to HQ 180 Armoured Brigade in June 2005. While on ERE, he was granted permission for attending promotion cadre from Dafadar to Naib Risaldar vide HQ Sqn 180 Armd Bde letter dated 21.2.2007. The petitioner qualified in the said examination, as is evident from the result sheet, but subsequently on the ground of not obtaining sanction from the unit, his result was cancelled vide HQ Sqn 180 Armd Bde letter dated 17.8.2007, which is under challenge in this petition.

3. The petitioner was discharged on 30.6.2008. The grievance voiced by the petitioner is that he should be deemed to have qualified in the promotion test of Dafadar with effect from 31.10.2002 and not from 24.11.2003 as was done by his unit. Similarly, his qualification in the promotion cadre notified vide order dated 6.5.2007 needs to be upheld and that he be considered by the DPC for promotion to the rank of Nb Risaldar.

4. A reply had been filed by the respondents. Learned counsel for the respondents has taken the stand that the petitioner appeared in the promotion test from Lance Dafadar to Dafadar which was held in his parent regiment on 31.10.2002 and the petitioner failed in two subjects viz. Tactics and First Leg Radio. As regards the tampering of result is concerned, it is submitted that total 14 persons attended the test and four persons, including the petitioner, failed. There is no evidence of reduction of marks from 45 to 33 in Tactics and from 44 to 33 in First Leg Radio Test held on 11-12.10.2002. He finally passed promotion test from Lance Dafadar to

Dafadar on 24.11.2003 and was promoted to the rank of Dafadar with effect from 25.4.2004 with date of seniority being 1.12.2003. In the present petition what we are concerned with is the passing of his promotion cadre in the borrowed unit (ERE Unit). It was pointed out that the petitioner belonged to 64 Cavalry, which is the cadre controlling authority of the petitioner and is responsible for career management of all ranks of the unit. The petitioner was posted on ERE and there he made an oral request to the OC for giving him sanction to appear in the promotion cadre from Dafadar to Naib Risaldar. Vide HQ Sqn 180 Armd Bde letter dated 21.2.2007, sanction was granted. Learned counsel for the respondents has also drawn our to the impugned order i.e.HQ Sqn 180 Armd Bde letter dated 17.8.2007, which specifies that ***"the individual was permitted to appear in the said cadre provisionally on individuals request pending sanction from the parent unit. However, the sanction was not accorded by the unit, hence the relevant Part II order for passing the test has not been pub by this Sqn."*** It was also pointed out by the respondents in their reply that Armd Corps personnel posted on ERE are not allowed to attend any promotion cadre without written permission from the CO of the parent unit in accordance with Record Office Instruction No. 001/2005, which was approved by the IHQ of Ministry of Defence (Army) Letter dated 18.2.2005.

5. Learned counsel for the petitioner has submitted that when the petitioner was allowed to appear for the promotion cadre as per the letter dated 21.2.2007, it was not stated whether the sanction was provisional or not. Therefore, treating the passing of the promotion cadre as provisional has jeopardised the chances of his promotion and hence once he has passed the promotion cadre, it should be recognised and he should be considered for promotion on the basis of seniority, in accordance with law. In this connection, learned counsel for the petitioner has

brought to our notice the decision of the Delhi High Court reported in **Lt Col Mukul Dev v. Union of India and others** (145(2007) DLT 53-DB) to contend that once a candidate is allowed to appear in the examination, he cannot be deprived and denied the fruits of his passing that examination. Reliance was also placed on the decision reported in **Shri Krishan v. Kurukshetra University** (AIR 1976 SC 376), wherein it was held that "once the candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear". As against this, learned counsel for the respondents invited our attention to the circular issued by Armoured Corps Records on 3.2.2005, which reads thus:

**ATTENDING OF PROMOTION CADRE/TEST BY PERS SERVING ON ERE WITH  
FMN HQs/NCC UNITS/RR BNs**

1. All promotions in the Armd Corps upto the rank of Ris Maj are Regt based except for centrally controlled categories. However approval for promotion to the rank of Nb Ris and above is obtained from AC Records before implementing the promotions. Various promotion cadre/tests, which are basic requisite for further promotion, are conducted by the respective Regts as per the policy and syllabus framed by them. However, till date there is no firm/common policy for their personnel serving on ERE with various Fmn HQs/NCC Units/RR Bns and other ERE units/ests. It will also be pertinent to note that quite a number of ERE Units/Fmns are not equipped with infrastructure/syllabus required for AC personnel.
2. Besides above, the Comdt of parent Regt is the sole judge as far trg and career prospects of his men are concerned. Personnel meeting the laid down QR are selected by the affiliated Regts for posting on ERE with various Est/Fmns/Units and those due for promotion to the next rank during ERE tenure are not supposed to be posted on ERE. Of late, it is observed that personnel on ERE undergo promotion cadre/test at their own without prior permission/concurrence of Comdt parent Regt.
3. To streamline the procedure, comments/views of all Armd Regts as well as Armd Fmns on this aspect were called for and majority of them have recommended that prior permission of Comdt parent Regt should be obtained by the ERE Fmns/Units before allowing AC pers to attend promotion cadres.
4. Keeping the above in view, it is decided that henceforth Armd Corps personnel serving with various ERE Ests/Fmns/NCC Units/RR Bns shall not be allowed to attend any promotion cadre without prior written permission/concurrence of the Comdt parent Regt. In case, any ERE Fmn/Unit allows a pers to attend promotion

cadre/test without prior permission of Comdt parent Regt, such cadres/test will not be accepted by the Parent Regt.

Learned counsel for the respondents submitted that as per this circular, if a person on ERE wants to undergo promotion cadre/test, prior permission/concurrence of CO of the parent Regt is mandatory. To streamline the procedure, comments/views of all Armd Regts of the Army were called for and majority of them recommended that prior permission of CO parent Regt should be obtained by the ERE Fmns/Units before allowing Armd Corps persons to attend promotion cadres. It was therefore decided that henceforth Armd Corps personnel serving with various ERE Ests/Fmns/NCC Units/RR Bns should not be allowed to attend any promotion cadre without prior written permission/concurrence of the Comdt parent Regt. In case any ERE Fmn/Unit allows a person to attend promotion cadre/test without prior permission of CO of the parent Regt, such cadre/test would not be accepted by the Parent Regt. Learned counsel has submitted that in view of this circular, the passing the promotion cadre by the petitioner while on ERE on oral request, cannot be treated as permission obtained from the parent unit.

6. In view of this circular, even if the petitioner has passed the promotion cadre, the same would not be recognised by the unit. We fail to understand how the OC of the ERE unit – HQ 180 Armd Bde, permitted the petitioner to undergo the promotion cadre without the sanction of the parent unit. The action of this officer, Col. M.S Markale, was totally unauthorised. A proper enquiry should be initiated against this officer for allowing the petitioner to appear for the promotion cadre without proper permission of the parent unit. In view of the above circular, the passing of the promotion cadre by the petitioner is totally unauthorised. We, therefore, do not find

any merit in this petition. In the result, the petition is dismissed, with no order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**November 01, 2011**  
**alx**